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Glorious Qur'ân 4:7

INHERITANCE IN ISLĀM

by Shaykh Muhammad Saleem Dhorat

Introduction

We are witnessing an era where Islām, in spite of its vastness and applicability in every sphere of the human life, has been confined to mere beliefs and a handful of rituals. Due to such an appalling attitude on the part of the Ummah, it is not surprising to hear such slogans as 'the need for Islamic reformation' in the present times. In such circumstances, it would be a great service of Deen to promulgate the immaculate teachings of this final Deen of Allah, which encompass every facet of the human existence. It would be the demand of time to explain the importance of, especially, those aspects of Deen which have lost their importance within the eyes of the masses and are regarded as obsolete and outdated (unfortunately people fail to realise that the Laws of Allah can never be outdated). This would be a duty of every member of the Ummah and those who will endeavour to execute it would be rendering a great service to the Deen of Allah. Indeed, it was for such parts of Deen that the Prophet ﷺ commented, "He who holds fast to a Sunnah of mine at the time of the (spiritual) degeneration of the Ummah will earn the reward of a hundred martyrs." (Bayhaqi)

As with some other important obligations of Islām, the obligation of ensuring the correct procedures in the field of inheritance has also been subjected to gross disregard and outright neglect. In the present times, this vital aspect of Islām seems to have been relegated to an unprecedented level and more or less abandoned. In fact, this section of Deen can be said to be the most neglected one among all. In addition, one rarely finds any discussion or speech emphasising the importance of this aspect of Deen. The result has been extreme carelessness in the common people with respect to the Islamic teachings of inheritance and division of the estate. People are seen resorting to either the un-Islamic legal systems or the prevailing customs in their respective societies. Seeing such state of affairs, the respected Shaykh Muhammad Saleem Dhorat embarked on the task of acquainting the Muslims on the importance of this vital duty. In accomplishment of this task, he delivered a number of lectures on this topic. These discourses proved to be highly informative and beneficial, but only to a limited audience. In order to extend the benefits to a larger part of the Ummah, it was decided that some of these discourses be selected and published in booklet form. Two of these lectures were finally chosen and are now at the stage of being published. All this has been possible only through the Fadhl of Allah. Another factor that inspired us towards its publication was the success and wide acceptance of some previous discourses related to other important themes.

Finally I ask Allāh ﷻ to accept this humble work and cause it to reach where it has been intended and further, and reward all instrumental in bringing it to the present stage. Āmeē

Abdul Hafiz Qadri

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Inheritance in Isl



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Inheritance in Islām (Part I)

by
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فَأَعُوذُ بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ:
لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ ؛ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ
مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ؛ نَصِيبًا مَفْرُوضًا .
صَدَقَ اللَّهُ مَوْلَانَا الْعَظِيمُ وَصَدَقَ رَسُولُهُ النَّبِيُّ الْأُمِّيُّ الْكَرِيمُ وَتَحَنَّنَ عَلَيَّ ذَلِكَ
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For men there is a share in what parents and the nearest of kin have left. And for women there is a share in what parents and the nearest of kin have left, be it small or large – a determined share. (4:7)

Respected 'ulamā, brethren, elders, beloved young friends and my respected mothers and sisters (listening at home). Through the Tawfeeq of Allah ﷻ, it has been a good fortune to recite in your presence a verse from Sûrah an-Nisā. Herein Allah ﷻ says:

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For men there is a share in what parents and the nearest of kin have left. And for women there is a share in what parents and the nearest of kin have left, be it small or large – a determined share. (4:7)

When parents and relatives pass away, whatever wealth they leave behind (which they had rightly owned), whether it is little or great, significant or insignificant, it will be distributed to both males and females within the family in accordance with the shares determined by Allah ﷻ.

This means that upon the death of an individual, by Law of Sharee'ah, the bereaved members of the family will receive only

that which has been stipulated by Allah ﷻ. Furthermore, only those relatives will inherit for whom the Sharee'ah has allotted a share. The classification of heirs as well as the amount which they are entitled to will vary from person to person, as each case is an individual one. Therefore, the muftis will need to be contacted to find out exactly what is due to whom. These jurists too will only judge by the Book of Allah, and do not have the right to make any alterations in the Laws of Allah. No human being, be it a great scholar, jurist or be it the deceased himself (prior to death), or any other close relative, has any authority or personal say in this distribution and shares that have been fixed by Allah ﷻ.

When was this verse revealed?

During the time of our beloved Prophet ﷺ, a Sahābi by the name of Aws Ibne Thābit ؓ passed away. He left a widow, a minor son and two daughters.

Before the advent of our Prophet ﷺ and the subsequently revealed Sharee'ah, in Arabia, widows, girls and orphans had no rights in society. During this age of ignorance, only he was considered worthy of receiving inheritance who was capable of fighting on horseback in a battlefield against the enemy and who would be able to bring home the 'spoils of war'. Obviously the women were not able to do that, and therefore, whenever a man died, the thought of his wife receiving anything was not even considered. Rather, ignorance had stooped to such a low level that the widow was also considered part of the estate. Thus, if a son by another wife came to inherit his late father's estate, he was at will to do as he wished with his step-mother; to the extent that he would even marry her without her consent or marry her away to some other person!

Similar was the position of young boys and girls. They too were considered unfit to receive inheritance, as they were incapable of fighting in the battle and bringing home 'war booty', or able to generate any sort of income by any other means. Accordingly, when Aws Ibne Thābit ؓ passed away, his wife, son and daughters were thought of as unworthy of receiving any

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Similar was the position of young boys and girls. They too were considered unfit to receive inheritance, as they were incapable of fighting in the battle and bringing home 'war booty', or able to generate any sort of income by any other means. Accordingly, when Aws Ibne Thābit ؓ passed away, his wife, son and daughters were thought of as unworthy of receiving any

inheritance. His closest relatives were two paternal cousins who were in the prime of their lives.

Both young men arrived and usurped the whole estate, and this was not even considered wrong by the society, in fact, a perfectly normal thing to do, for that had been the prevailing custom. Whenever an incorrect practice becomes entrenched in a society, it fails to be considered as wrong and is regarded as perfectly normal in the eyes of the people, no matter how unjust it may be. Consequently, when an attempt is made to reform this malpractice, such attempts themselves are viewed strangely and thought of as incorrect.

Reluctantly, the poor widow resigned herself to fate. However, the thought arose in her mind, 'I now have to fend for myself, my two daughters and my son. If only these two (the cousins) would marry each of my daughters, at least the responsibility of fending for them would be removed from my shoulders.' Accordingly, the widow of Aws ؓ proposed to the two young men. Both openly refused.

This poor widow approached and related the whole episode to our beloved Prophet ﷺ who had always disapproved of this vile practice and had been awaiting a Command from Allah ﷻ. Within a short time, the signs of Wahi became visible upon the noble face of the Prophet ﷺ, and the above-mentioned verse was revealed, which once and for all annihilated this vulgar and cruel practice.

Equality in Inheritance

The right to inherit is common to both men and women. So when the father passes away, just as the son has a right to inherit, so will the daughter. Similarly, when the son dies, just as the father is entitled to a share, so will the mother and wife. And should he leave behind only brothers and sisters, then they too will inherit.

The verse contains clear emphasis with regards to the entitlement of women. The entitlement of both men and women could have easily been contained in a single sentence, but Allah ﷻ preferred

to initiate a new sentence to lay extra emphasis as regards the inheritance of women.

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This separate mention of women is to emphasize and make people realize that females too enjoy the right to inherit, as do men. Upon the revelation of these verses, the Prophet ﷺ divided the estate in accordance with the Commands of Allah ﷻ, which in this case resulted in both cousins receiving nothing. This was because in the laws of inheritance, the principle of 'Al aqrab fal aqrab' (closest before the close) is applied; i.e. should children of the deceased be living, the question of cousins receiving anything just does not arise.

Divine Portions for Women

Accordingly, the greatest Mufti of all time, the Messenger of Allah ﷺ apportioned one-eighth of the estate to the widow [as per the principle that in the event of the deceased being survived by the wife and children, the wife will receive one-eighth (12.5%), and should he be survived by only his wife (and no children), then she will receive one-quarter (25%)].

The Prophet ﷺ divided the remaining estate (87.5%) into four equal parts (21.875%) and granted one portion to each daughter and two shares (43.75%) to the son. This was the incident that inspired the revelation of this verse.

Therefore, irrespective of the amount the deceased leaves behind; be it only £50, an apparently trivial sum, which becomes even smaller when divided up, all the inheritors will receive their Divinely determined share.

This is why our Fuqahā (jurists) have stated (through which the sensitivity and gravity of this Command will be understood) that

even the clothing in which the deceased had passed away would form part of the estate. No inheritor has the right to distribute or dispose of these clothes without the prior consent of every inheritor, irrespective of their whereabouts; whether they be present at home or abroad in another continent. This applies to everything belonging to the deceased, including such insignificant articles as bottles of perfume, rosaries, hats, spectacles, pens, sheets of papers; any possession whatsoever and however insignificant it may be.

Allah's Choice of Distribution

We should all remember that it is Allah ﷻ who has determined who receives what and how much. Herein, not even the deceased has any choice. He cannot claim that such and such a person has been a great friend and benefactor, therefore when I die, he should receive half of my estate; or of my two sons, this one was more loyal and devoted, therefore, he should receive the greater share. Likewise, the elders of a clan or community have no right to decide who should receive what. Remember,

Allah is All-Knower, All-Wise.

Allah's 'Ilm (Knowledge) is greater than ours, and as well as being 'Aleem (the All-Knowing) He is also Hakeem (the All-Wise), and it is with these great qualities have shares of inheritance been determined. Herein, none of us has any say or opinion. After the death of the deceased, all his estate will become the property of the inheritors and will be distributed in accordance with the Laws of Sharee'ah. The guardians of the Sharee'ah are none other than the 'ulamā-e-Haqq and muftiyān-e-Kirām. Therefore, we will need to consult them and present them with all the facts, including the minutest detail in regard to the estate and number of inheritors, and seek their explanation of how much to distribute and to whom.

The purpose for this explanation is to emphasize that everything the deceased leaves behind and which was his/her property, will fall under the estate, which now becomes the property of every inheritor. It is therefore not permissible for some inheritors to

decide on this estate without the consent of the others, as upon every penny, each of the heirs will have some form of claim and right until it be divided in accordance with the Sharee'ah.

What can be drawn from the estate

1. Funeral Expenses (Bathing, Shroud and Burial)

From the estate, the first right of the deceased is that of the funeral expenses. It is of course, quite another matter, if out of love and affection one or more of the inheritors decide to personally bear this expense. (However, if the deceased be a woman survived by her husband, then her husband will bear the funeral expenses. This will be his responsibility, irrespective of whether she has left behind an estate or not.)

The point to remember here is that neither should one indulge in extravagance nor miserliness, but should rather adopt a path of moderation. The deceased has now left this world, so what benefit is there in lavishing money on the purchase of something as simple as a shroud? Aboo Bakr Siddeeq ؓ, at the time of his death, bequeathed in the following words: 'Bury me in these very clothes that I am wearing, as new clothes befit a living person.' This had been the condition of our pious elders and predecessors. On the contrary, today, we find that people purchase highly expensive coffins and shrouds, and indulge in lavishness when simplicity would have done.

2. Debts

After drawing the funeral expenses, one will need to ascertain whether the deceased had left any unpaid debt. Scrutinize his diaries, record books and statements. Besides, people themselves will come and claim that the deceased owed them such and such an amount. Therefore, the second priority will be to pay off all unpaid debts. Should the deceased leave behind a house valued at £50,000, and also have debts amounting to the same, then the house will have to be sold in order to pay the debts. The inheritors will, in such a circumstance, receive nothing. And should the inheritors refuse to clear the debts and unjustly claim the £50,000 for themselves, then the money, which they will wrongfully seize,

even the clothing in which the deceased had passed away would form part of the estate. No inheritor has the right to distribute or dispose of these clothes without the prior consent of every inheritor, irrespective of their whereabouts; whether they be present at home or abroad in another continent. This applies to everything belonging to the deceased, including such insignificant articles as bottles of perfume, rosaries, hats, spectacles, pens, sheets of papers; any possession whatsoever and however insignificant it may be.

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After drawing the funeral expenses, one will need to ascertain whether the deceased had left any unpaid debt. Scrutinize his diaries, record books and statements. Besides, people themselves will come and claim that the deceased owed them such and such an amount. Therefore, the second priority will be to pay off all unpaid debts. Should the deceased leave behind a house valued at £50,000, and also have debts amounting to the same, then the house will have to be sold in order to pay the debts. The inheritors will, in such a circumstance, receive nothing. And should the inheritors refuse to clear the debts and unjustly claim the £50,000 for themselves, then the money, which they will wrongfully seize,

will be deemed harām. This is because this money did not belong to the deceased anyway, and was a loan, which he borrowed from others, therefore it must be returned to its rightful owners.

Many of us today are quick to take advantage of favourable occasions, fair or foul. We fully remember what is owed to us (the bereaved relatives), and readily furnish our claims with written evidence found in the records of the deceased, however we conveniently overlook what the deceased owed to others, which may also be well-documented. Accordingly, when a debtor arrives to claim back his money, which the deceased may have very clearly written down, the reply would be, 'Our late father never mentioned anything about this to us, therefore present your evidence!' Do not glee upon having deprived this person of his rightful wealth; rather ponder over the punishment which will befall such a person who so artfully usurps the rights of others, and indeed the probability of the father being punished too in the grave if he failed to leave behind instructions concerning the debts he owed to other people.

Loyalty demands that children acknowledge and endeavour to clear any genuine debts their father had left behind. The reply of such loyal children is, 'Although our father did not leave sufficient money to clear the debt immediately, please be patient whilst we strive to pay you. Do not worry, from today fulfilment of his debts is our responsibility.'

This is the demand of affection for the father, the person who nourished and nurtured us from childhood. Today Allah ﷻ has granted us an opportunity to assist him, yet, our actions and selfish behaviour becomes a means for his suffering in the grave.

Therefore, should a person leave behind an estate valued at £50,000, with debts of £45,000, then these debts will be cleared first. The remaining will be distributed amongst the inheritors in accordance with the Laws of Sharee'ah, obtained through the consultation of an 'ālim.

3. Wasiyyat (Bequest in 33.33% of Estate)

A person has the right to make a wasiyyat (bequest), such as the statement, 'Upon my death, from my estate, 'x' amount should be given to the following person/s, and this much should be donated to this particular masjid'. However, even in a wasiyyat certain rules will apply. Firstly, the deceased may not make a wasiyyat for any of his inheritors. Whilst his wife will receive her determined share, he cannot also bequeath, 'She should be the beneficiary of an extra £1,000', because the Prophet ﷺ has stated,

لَا وَصِيَّةَ لَوَارِثٍ

There is no wasiyyat for an inheritor. (Aboo Dāwood)

Therefore, wasiyyat can only be made for those who are not going to inherit. For example, in the event of the deceased leaving behind a wife, sons, daughters and parents, the deceased's brother (in this particular case) will not receive anything as part of inheritance. So it would be allowed to appoint him to be the recipient of wasiyyat (as he is no more an inheritor). However, a mufti should be consulted before taking any decisions.

The second point to remember is that wasiyyat only operates in one-third (33.33%) of the estate. For example, if a person makes a wasiyyat of, say, £5,000 to be donated to a particular masjid, as far as the condition is concerned, the masjid will be eligible for what had been stipulated in the wasiyyat, as the masjid is not an inheritor of the deceased. However, upon death, if, after deducting the funeral expenses and debts, it is found that only £9,000 remain, the masjid will not receive £5,000 as proposed in the wasiyyat, it will only receive £3,000. This is because wasiyyats operate in one-third of the estate only and that too after the deduction of funeral expenses and debts. For clarity, the following illustration is given:

Wasiyyat	£5,000
Estate (after funeral expenses and debts)	£9,000
Two-Thirds for Inheritors	£6,000
Amount actually donated to the masjid	£3,000

will be deemed harām. This is because this money did not belong to the deceased anyway, and was a loan, which he borrowed from others, therefore it must be returned to its rightful owners.

Many of us today are quick to take advantage of favourable occasions, fair or foul. We fully remember what is owed to us (the bereaved relatives), and readily furnish our claims with written evidence found in the records of the deceased, however we conveniently overlook what the deceased owed to others, which may also be well-documented. Accordingly, when a debtor arrives to claim back his money, which the deceased may have very clearly written down, the reply would be, 'Our late father never mentioned anything about this to us, therefore present your evidence!' Do not glee upon having deprived this person of his rightful wealth; rather ponder over the punishment which will befall such a person who so artfully usurps the rights of others, and indeed the probability of the father being punished too in the grave if he failed to leave behind instructions concerning the debts he owed to other people.

Loyalty demands that children acknowledge and endeavour to clear any genuine debts their father had left behind. The reply of such loyal children is, 'Although our father did not leave sufficient money to clear the debt immediately, please be patient whilst we strive to pay you. Do not worry, from today fulfilment of his debts is our responsibility.'

This is the demand of affection for the father, the person who nourished and nurtured us from childhood. Today Allah ﷻ has granted us an opportunity to assist him, yet, our actions and selfish behaviour becomes a means for his suffering in the grave.

Therefore, should a person leave behind an estate valued at £50,000, with debts of £45,000, then these debts will be cleared first. The remaining will be distributed amongst the inheritors in accordance with the Laws of Sharee'ah, obtained through the consultation of an 'ālim.

3. Wasiyyat (Bequest in 33.33% of Estate)

A person has the right to make a wasiyyat (bequest), such as the statement, 'Upon my death, from my estate, 'x' amount should be given to the following person/s, and this much should be donated to this particular masjid'. However, even in a wasiyyat certain rules will apply. Firstly, the deceased may not make a wasiyyat for any of his inheritors. Whilst his wife will receive her determined share, he cannot also bequeath, 'She should be the beneficiary of an extra £1,000', because the Prophet ﷺ has stated,

لَا وَصِيَّةَ لَوَارِثٍ

There is no wasiyyat for an inheritor. (Aboo Dāwood)

Therefore, wasiyyat can only be made for those who are not going to inherit. For example, in the event of the deceased leaving behind a wife, sons, daughters and parents, the deceased's brother (in this particular case) will not receive anything as part of inheritance. So it would be allowed to appoint him to be the recipient of wasiyyat (as he is no more an inheritor). However, a mufti should be consulted before taking any decisions.

The second point to remember is that wasiyyat only operates in one-third (33.33%) of the estate. For example, if a person makes a wasiyyat of, say, £5,000 to be donated to a particular masjid, as far as the condition is concerned, the masjid will be eligible for what had been stipulated in the wasiyyat, as the masjid is not an inheritor of the deceased. However, upon death, if, after deducting the funeral expenses and debts, it is found that only £9,000 remain, the masjid will not receive £5,000 as proposed in the wasiyyat, it will only receive £3,000. This is because wasiyyats operate in one-third of the estate only and that too after the deduction of funeral expenses and debts. For clarity, the following illustration is given:

Wasiyyat	£5,000
Estate (after funeral expenses and debts)	£9,000
Two-Thirds for Inheritors	£6,000
Amount actually donated to the masjid	£3,000

Causes of Incorrect Wills

The two fundamental rules regarding the wasiyyat should be borne in mind. Firstly, the deceased may only make a wasiyyat in one-third of the estate, and the remaining two-thirds will be distributed in accordance with the Laws of the Sharee'ah. And secondly, it is not permissible to make wasiyyat for any inheritor.

It should not be too difficult to realise now that modern-day wills grossly contravene the Sharee'ah, as they operate in 100% of the estate (or at least in more than 33.33%) and/or that there is no discrimination between those who are to inherit and those who are not to. If the amount for one's wife, for instance, is already determined (as an inheritor), one will have no right to specify any portion of the estate for her (as wasiyyat). The Sharee'ah forbids this, and any will made in violation of the Shar'ee Laws will be of no significance. She will receive only that amount which she is eligible for, being an inheritor.

In such instances (where the deceased has failed to keep in view the rules of Sharee'ah), the beneficiary should never take unfair advantage of un-Islamic legal rights and court proceedings to enforce the will, as acquisition of wealth (or possessions) in this manner, in the eyes of the Sharee'ah, is akin to usurpation and theft. Just as a thief fills his pockets with harām money, so does the person who resorts to un-Islamic laws to devour the estate. Moreover, should orphans be amongst the deprived inheritors, then the gravity of the sin will increase.

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا، وَسَيَصْلَوْنَ سَعِيرًا.

Surely, those who eat up the property of orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell. (4:10)

The Three Criteria for Wasiyyats

Accordingly, when a person dies, first deduct the funeral expenses and debts from the estate. Secondly, ensure all wasiyyats are within one-third of the estate and see whether it is incorrectly in

favour of any inheritor. Thirdly, scrutinize whether the wasiyyat is for any harām or sin.

An example of a sinful wasiyyat could be of a man who makes a will solely to deprive his heirs (those children of his, for example, who failed to fulfil his every whim and tantrum). He consults with his cronies and lawyers to draw up such a will wherein the local masājid, for example, will receive a share of his estate. The reason for such apparent generosity to a good cause? Nothing other than to spitefully deprive his children from their rightful due! This is a sinful wasiyyat. Therefore, sincerity is extremely important when drawing up wills, even if it were in one-third of the estate. It may appear that the person has performed a very good deed by donating to a good cause, a means of pleasing the Lord, but in reality, such a wasiyyat may bring about exactly the opposite effects.

It is therefore incumbent for people to consult and seek guidance from the 'ulamā with respect to matters relating to inheritance, and they should do this without any delay. Wills should be drawn up with their guidance, wherein it should be stated very clearly that it is the wish of the testator that the estate be distributed in accordance with the Sharee'ah. It would also be wise to specify an authentic 'ālim, mufti or some Islamic institute, under whose authority one would like the distribution to be carried out and who would have the final say in matters should any dispute arise.

Such wasiyyats are a means of acquiring reward and the Pleasure of Allah ﷻ, for as well as saving himself from sin, the person would also close all doors of misappropriation following his death. Even if his children should squabble amongst themselves and take their arguments to a court of law, the ruling will still be in compliance with the deceased's wishes, but more significantly, in accordance with Sharee'ah.

Minor's Consent

Sometimes, the deceased leaves behind minor inheritors. Even if they be present, their consent is not acceptable in the eyes of the Sharee'ah until they reach the age of maturity. Why? Simply

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because they are too young to decide for themselves and may make the wrong moves by the persuasion and coaxing of older relatives.

Settling and Dining at the Deceased's House

Among the prevailing yet incorrect customs of the present times, we find that following the death of a person, relatives, friends and associates descend on the bereaved home and without feeling the need to seek the consent of the inheritors, will dine there, and some will even settle there for days, all at the expense of the deceased. Only after a lengthy period has elapsed will they sit down to settle accounts. Such abhorrent customs should be discontinued. Another custom is related to the funeral expenses. The expenses of this should be drawn from the estate of the deceased before its division. However, one should remember this only incorporates the expenses of bathing, shroud, soaps and perfume, plot in the cemetery and transportation. Nowadays people also include therein the expense of hosting and feeding the condoling guests, especially those who come from distant places. This cost has no relationship with the bereaved, yet people deduct it from the estate as part of the funeral expenses.

Accordingly, when minor children are also amongst the inheritors, then all these unnecessary expenses (of hosting and feeding) is in actual fact usurpation of wealth which belongs to orphans! All those who consume this food are also eating from the wealth of these orphans. Remember, Allah ﷻ says:

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا، وَسَيَصْلُونَ سَعِيرًا.

Surely, those who eat up the property of orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell. (4:10)

Reflect upon this verse and hasten towards eliminating these incorrect customs which are rampant in our societies. Within our towns, cities and communities are present such 'ulamā, who are willing to guide and help you; turn towards them and inquire as to the correct method for distributing inheritance.

The Prophet ﷺ said:

يُبْعَثُ يَوْمَ الْقِيَامَةِ الْقَوْمُ مِنْ قُبُورِهِمْ تَاجِعُ أَفْوَاهُهُمْ نَارًا. قِيلَ: يَا رَسُولَ اللَّهِ مَنْ هُمْ؟ قَالَ: أَلَمْ تَرَ أَنَّ اللَّهَ قَالَ: إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا، وَسَيَصْلُونَ سَعِيرًا.

On the Day of Judgement, a group of people shall be raised from their graves, fire shall be belching out of their mouths. It was asked, "Who are these people, O Messenger of Allah?" He replied, "Do you not see? Verily, Allah says: Surely, those who eat up the property of orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell". (Tafseer Ibne Katheer)

[Ibne Katheer's commentary elaborates that those who unjustly eat the wealth of orphans will, when they arise from their graves on the Day of Qiyāmah, be in a condition where embers of fire will be in their stomachs and flames will belch out from their ears, mouths, eyes and nose! (Tafseer Ibne Katheer)].

Once a saint went to visit an ill person at night. A lamp was burning near the ailing man's bed. As fate had destined, this ill person passed away in the presence of this saint. Immediately, the saint extinguished the lantern and ordered an accomplice to go and bring a lantern and some oil from somewhere. These were brought and the lantern was lit. Someone present enquired, 'Shaykh, what need was there for this trouble, especially at this hour of night?' The saint replied, 'As long as this person was alive, the oil and lantern belonged to him and was halāl for us to benefit from. However, the moment his soul departed, all his belongings, including this lantern and its oil became the property of his inheritors. Now, it is not permissible to make use of anything without the consent of all of them, and not all of them are present here. Therefore, I did not consider it appropriate to make use of this property.'

Depriving Sisters – An ill within our Societies

Another custom, which is quite prevalent amongst our societies, is the disinheriting of the daughters, based upon the false notion

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that father had given all he wanted to his daughters during his lifetime. This, however, is not correct.

What is the meaning of the Arabic word 'meerāth'? What is the meaning of the English word 'inheritance'? What is the meaning of the Urdu word 'wirāsat'? Each of the above gives the same meaning, the distribution of a person's estate after his death! Obviously, anything which a father gives to his children during his lifetime, is called a gift. After death, no account is taken of these gifts, no matter what their size or nature, for now a new system of accounting comes into order, namely, inheritance.

Many males who label themselves as pious contact their sisters and very cunningly state, "Sister, as I intend to go by the Shar'ee Laws, I would like to ask you what to do with your share of the estate, left by our beloved father?" Observe how sisters are pressurized and embarrassed in a society wherein ladies are expected to waive their shares. These poor souls will be constrained to reply, "Yes, brother, I am very happy in my home, you do as you wish with my share." Ponder, when we owe somebody money, do we go up to them and ask, "I owe you £50, what shall I do with it?" Of course not, we physically hand the money over. Then, why do we ask our womenfolk whether they wish to receive their portion of inheritance?

This is deception and fraud; it is a surreptitious ploy to deprive ladies from their rightful due. On such occasions, the women should not be given an option or asked for opinions, rather, money should be physically handed over to them. Should they state, "Brother, do as you wish with this money", one may reply, "Accept it for now, as this is your rightful share." If after a few months or so, she still insists, without coercion, that the brother should keep it, then that would be a different case altogether.

The supposed financial well-being of (married) daughters and the poverty of the sons is irrelevant as far as distribution of the estate is considered. Should brothers refuse to hand over to them their share, this will be harām wealth in their possession, which will be transformed into embers of fire in the grave and the Hereafter.

Separate Ownership

Another matter, quite often overlooked, is the need during one's lifetime to maintain correct records of everything owned by separate members of a family. We find joint bank accounts in the name of husband and wife, wherein both deposit their money. What will happen when one of them dies? Who will know how much belongs to whom?

When the 'ulamā are approached in this regard, they are usually asked to determine the shares prescribed by the Sharee'ah, yet cannot determine themselves the size and amount of the estate of the deceased. When asked, they normally reply by saying, "We had never kept any records." Under such circumstances, how may one ascertain what and how much to distribute? The same problem often arises in business partnerships and joint accounts between father and children. The son hands over his weekly wage to his father for safekeeping. Now, when the father dies, the son will, quite rightly, wish to reclaim his earnings, but other family members may protest and say, 'This was father's own wealth!' Now disputes begin to arise within the family, and complicates matters further for the 'ulamā.

Similarly, there might be a car in the household, jointly owned by father and child. One person may have paid £1,200, whereas the other may have contributed a mere £300. What will happen upon the death of either? Therefore, keep a written record to avoid problems arising later.

It is well-documented about the grand Mufti of Pakistan, Mufti Muhammad Shafee' *rahmatullahi alayh*, that at the time of his death, it was possible to know each item he owned, right down to every pen and pencil in his office, as he had only allowed that item to be kept in his room, which belonged to him.

If this appears pedantic, just ponder how humans react later. The wife may purchase a fridge with her own money and the whole family will use it. However, because no written records were kept, upon death or divorce, arguments will start; both parties will

that father had given all he wanted to his daughters during his lifetime. This, however, is not correct.

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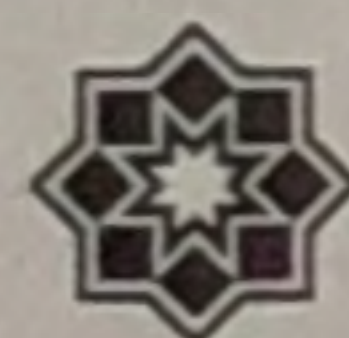
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claim possession. Had separate records been maintained, such disputes would not have arisen.

Reflect upon how husband and wife keep their clothes separately. Would anybody say, 'All this because they do not have love for one another'? Of course not, as they fully know that this is done to ensure convenience. Consequently, why would it be improper to maintain separate bank accounts and a record of ownership for each item owned? Mutual love does not diminish by keeping records, rather, it would diminish (and usually whole relationships are severed) by not keeping records, which can only be witnessed upon a death. Moreover, because correct distribution of inheritance is a Command of Allah ﷻ, maintaining a record of ownership is something greatly stressed in Deen.

May Allah ﷻ give us all the true understanding of Sharee'ah and the tawfeeq to practise upon it fully. Āmeen.



Inheritance in Islām (Part II)

by

Shaykh Muhammad Saleem Dhorat

الْحَمْدُ لِلَّهِ وَحْدَهُ وَالصَّلَاةُ وَالسَّلَامُ عَلَيَّ مَنْ لَا نَبِيَّ بَعْدَهُ ، أَمَّا بَعْدُ
قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ:
تَعْلَمُوا الْقُرْآنَ يُضَوِّعُ وَعَلَّمُواهَا النَّاسَ فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى،
وَهُوَ أَوَّلُ شَيْءٍ يُنْزَعُ مِنْ أُمَّتِي.

The Prophet ﷺ has stated:

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Acquire the knowledge of inheritance and teach it to people, for it is half of knowledge and it will be made to be forgotten and it is the first knowledge to be taken away from mu Ummah. (Ibne Mājah & Hākim)

An erroneous custom

It has been generally observed, especially among the communities originating from the Indian subcontinent, that people tend to allocate proportions of their estate and wealth before their death to various members of their families, but without making them owners. The actual distribution of their estate is carried out after their death by the relatives according to the proposed division. This custom is prevalent in India and is also practised by many in the Western countries. In the case of the modern thinking Muslims of these countries, the drawing up of a will seems to be a better option. Shares are allocated to various individuals and recorded in the will, but, here too, the actual distribution takes place after their death. In both cases, the deceased, prior to their death, states their desires as regards the distribution of their possessions but does not make anybody an owner for as long as they are alive. As such, both of these methods of distribution are incorrect, as, in both, the actual distribution takes place after the death and Islamic law demands that the distribution of the estate after death can only be carried out in accordance with Islamic laws, and this distribution has been predetermined by Allah.

The importance of drawing up a will

In the case of drawing up a will, the Law of this country dictates that distribution of the estate will be enacted in exact accordance to what has been stated in the will. Therefore, if one wishes to adhere to Islamic laws of inheritance, one simply has to draw up a will in the Islamic manner with the help of an Islamic jurist and his relatives will inherit in the way required by Islām. There is absolutely no difficulty in applying the Islamic laws of inheritance in this country, provided one makes a little effort to carry out the above procedure. It is important to note that once the will is drawn up, under no circumstances will it ever be subjected to abrogation or alteration of any kind after the death of the individual concerned.

A contradiction in belief and practice

It is surprising how Muslims proclaim their adherence to Islām and assert Islamic laws to be the most practicable and just, yet when it comes to enacting them, they are the very first to resort to the courts for a solution, which to them seems an equitable one. Whether it be the occasion of inheritance, disputes in business or matters relating to divorce, their attitude is all the same. Many compare the Islamic and British laws, and seeing a trifle benefit in the latter, readily sacrifice their Religion over paltry gains of this world. This unlawful and unjust seizure of wealth from the opponent, in defiance of the Islamic laws, is absolutely impermissible.

On the other hand, there are those who are completely unaware of the fact that there are laws in Islām regarding inheritance too and compliance to these is as important as to laws relating to any other aspect. The estate, following their death, lies at the mercy of the inheritors, where deception and misappropriation is not something very unusual. In such prevailing circumstances, it becomes binding upon us to make a will that conforms to Islamic laws, hence ensuring an equitable distribution of the estate.

In any case, my intention is to emphasise the importance of according preference to the Islamic system in the distribution of an estate (as well as every other aspect of life). And in order to achieve this aim in this country, the drawing up of a will, which meets the criteria of both the Islamic and British legislations, is a necessary requirement. Such a will has already been designed and prepared by

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the *Islamic Da'wah Academy* and is available to the public on demand. We urge the readers to obtain this and fulfil a fundamental requirement of Islām.

Some important rules to remember

A point that needs to be deeply inculcated within our minds today is that the laws of Islām on (every aspect including) inheritance are clearcut and precise. The shar'ee law states that nobody has the authority to devise methods of distribution, as this has been predetermined in the most perfect and just manner by the Creator Himself. And in light of His Law, one is allowed to bequeath (allocate shares whose distribution is to take place after their death) in one third of the estate only. Moreover, shares can only be allocated to those who are not to inherit by the Islamic law. As far as the inheritors are concerned, they shall only receive what has been prescribed for them by the Sharee'ah. Bequest cannot be made for them and if it has, it will not be enacted, even if it is relatively negligible.

It should be noted that in making a bequest, one is allowed to allocate shares to any person, people or organisation, while remaining within a third of the estate only. Another point to remember here is that the above restrictions, i.e. 'bequest can be made from one third of the estate only and it cannot be made for the inheritors' applies only when the distribution is to take place after the death of the owner. Such restrictions, however, do not apply if one wishes to dispose of one's wealth and/or possessions during one's life.

After the death of the individual, his/her entire estate (except for the bequest in a third if he/she has made any) will be divided in accordance with the principles of the Sharee'ah only. These laws will be applicable in even the most insignificant of possessions, such as a box of matches and even a single matchstick.

Once death has struck the individual, nobody will have any right over any item belonging to the deceased, except for what will fall in their share after shar'ee distribution. And in order to determine the amount that each inheritor will receive, one will have to consult those who have a thorough knowledge of the Islamic Laws of inheritance, i.e., the Islamic scholars.

An inspiring incident

I recall an incident at this point, which took place in a nearby town. A man had died leaving behind his wife and a few children. The wife's father came to me to find out about the Islamic ruling in this regard. Now, the relatives of the deceased that were to inherit according to the Islamic Laws, were his mother, wife, one son and two daughters. The deceased's father was not alive. The calculations revealed that the mother of the deceased, i.e., the mother-in-law of the widow, was to receive between £12,000 to £15,000.

Since there was no will to be found, which he may have made prior to his death, and the ownership of the entire estate was under both his and his wife's name, by Law, the estate would have automatically been transferred to his wife. So the father of that widow went back and informed her of the Islamic ruling, especially that her mother-in-law was also to inherit a substantial amount of the estate. One point to be noted here is that the relations between the widow and her mother-in-law were not stable. Moreover, the mother-in-law wasn't even demanding her share, either because of the strained relations, or, due to the ignorance of Islamic Laws, she may have assumed that she had no part in the estate.

In spite of all this, when the widow was informed of the case, she demanded that the estate be divided in accordance with the Laws of Islām and her mother-in-law be given her rightful share. She explained that her contention with her mother-in-law had nothing to do with this distribution, and because of this, she didn't want to devour her share of the estate and hoard wealth that was Islamically unlawful for her. I was highly impressed with this stance of hers and thought that if all of us adopted a similar attitude, how peaceful would our societies become.

Benefits of adopting the Islamic system

The reason why many of us refuse to accept the Islamic Laws on inheritance is because at times we find ourselves better off by resorting to the Western laws. One should, on such occasions, remember that if all the members of the family, and society at large, began to apply the Islamic Laws, then the loss on some occasions will be compensated by the gain on many others. Moreover, unlike the Western system of inheritance, the Islamic system caters for a much

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wider group of relatives. Thus, if one relative feels that he/she is at a loss by applying the Islamic Laws, there are many others who will gain, who otherwise wouldn't have. To illustrate, if, for instance, a person decides to disinherit his sister thinking that part of the estate will end up in somebody else's (brother-in-law) possession, he should know that his wife is somebody's sister as well. How would he feel if she was disinherited by her brother on the grounds that the wealth would end up in his possession? And what should be remembered above all is that the Laws of Allah can never be unjust and inequitable. And even if we are to suffer any loss, what is the reality of this worldly loss as compared to that of the Hereafter. In fact, we, as Muslims should be prepared to sacrifice everything, including our lives, in order to attain the Pleasure of Allah. Hence, each and every one of us should, at all times, be content with what has been decided for us, whether it be to our benefit or harm.

What we must do following a death

So the foremost thing to remember is that following the death of a family member, we should first of all set aside all the possessions and wealth that belonged to him/her, including the most insignificant of items. Then, without the least delay, the Islamic scholars should be consulted for the correct view on the shar'ee method of distribution and the estate should be distributed accordingly. In order to carry out the first procedure, the family would need to determine what belonged to the deceased. And this would be extremely difficult, or even impossible, if they have no knowledge of it. So to avoid confusion upon the arrival of such critical moments, every member of the family, at all times, should know what belongs to whom and, preferably, a record of this should also be kept.

One thing that is quite common in this country is that both the husband and wife are listed as official owners of their property and estate. This would not cause any harm if both of them were aware of their respective possessions. So, at the time of death, regardless of what is found in the official records, we would be able to ascertain, without the least doubt, what belonged to the deceased. But, nowadays, the most common problem that arises at the death of one is that the bereaved one is totally ignorant of what exactly belonged to the deceased. So it is very important for every member of the family to know what he/she and others in the family own.

The precautionsness of Mufti Muhammad Shafee' rahmatullahi alayh

I have read in the writings of Mufti Muhammad Taqi Uthmāni that upon the death of his father, Mufti Muhammad Shafee' *rahmatullahi alayh*, there was not the slightest confusion about any item in the house as to who was the owner of it. This was because during his life, Mufti Muhammad Shafee' *rahmatullahi alayh* had ensured to keep a precise record of the ownership of every possession of the house. He made sure that only those items remained in his room that belonged to him. If any item did ever creep in he would be very particular to ensure that it is taken out immediately. This made the distinction of the estate extremely easy for the family after his death.

This should be the situation of every household. But, unfortunately, this is not so. Today, we may have the exact knowledge of our shares as far as the financial assets or estate is concerned, but that is certainly not the case with the furniture or other inferior articles of the house. Sometimes, we borrow items from others and forget to return it. And after a lengthy period, we even forget whether we borrowed it or it belonged to us. So it is essential that we keep a record of what belongs to who, as this is a requirement of the Sharee'ah.

Negligence now will lead to confusion later

In our societies, it is thought to be embarrassing and even offensive that brothers (or other immediate relatives for that matter) should sit down and determine their respective shares. But regardless of what it is considered to be in the societies, it is binding upon us to do this, as there is no other way of determining who owns what. With many couples for example, there is a single joint bank account within which money is deposited by both indiscriminately. In such cases, if there is an understanding between them, such as that irrespective of who deposits, the money will, invariably, belong to the husband or to the wife, or half to him and half to her, there will be no confusion upon the death of either. But, more often than not, we face serious problems as there is no such understanding in between.

Similarly, there are hundreds of articles present in the houses of many that are used by the entire family, but without the knowledge of exactly whom they belong to.

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Similarly, there are hundreds of articles present in the houses of many that are used by the entire family, but without the knowledge of exactly whom they belong to.

Even if it does not lead to any friction and controversy following a death, we still need to exercise extreme precaution in this regard, for this is a demand of the Sharee'ah.

So the first thing we need to do is to determine the ownership of every item of the house. And secondly, we need to draw up a will stating that the estate should be distributed among the inheritors, in accordance with the Laws of Islām. And the will prepared by the *Islāmic Da'wah Academy* can be very helpful in ensuring that the division of your estate will comply with the requirements of the Sharee'ah. You will also be able to put down the names of three trustees of your choice. These can be the names of three 'ālims, for instance. You can also put down the name of an organisation or an institute of your choice, which will have the final say in the unlikely event that your chosen trustees disagree.

So it is very important that we take these steps, especially in a country where we know for a fact that the Islamic distribution of the estate will only come into effect when we have taken the trouble of drawing up a will along the Islamic lines.

A prevalent yet objectionable custom

At this point, I would like to draw your attention to something that is very common in our societies. The womenfolk of our communities are usually excluded from the list of heirs. And because this custom is deeply rooted, even where the women are asked to demand and receive their shares, they feel as if they would be demanding something that does not rightfully belong to them. Many a time, brothers will approach their sisters, citing the amount that falls in their share, but instead of handing over to them their share, they ask, "What do you want me to do with your share?" The women, in such cases, obviously, refuse to accept anything. How absurd! If the money belongs to them, why ask what to do with it? If you owe someone money and wish to repay it, do you go and ask him what to do with it?

Shaykh Ashraf 'Ali Thānwi *rahmatullahi alayh* has gone to the extent of saying that if the women refuse to accept the money that falls in their share, you should compel them to take the money into their possession and then do as they wish.

I advise you all to be very particular in these matters of Sharee'ah. It is important that we are aware of what the Sharee'ah demands of us and in order to do that we need to consult the 'ulamā in this regard. Even those of us who may have disregarded these Laws of Sharee'ah some time ago in the past, should immediately contact the 'ulamā and try and resettle their cases in the light of Sharee'ah, even if that entails a heavy compensation on our part.

A thought provoking incident

Once a man came to Shaykh Ashraf 'Ali Thānwi and requested to join his spiritual circle of mureeds (students in spirituality). The shaykh asked him whether he had come with a sincere urge. The man replied in the affirmative. So the shaykh said to him that since the Islamic laws of inheritance were not practised in his region, before he could pledge allegiance to him, it was necessary that he undertook the task of tracing back as far as he could in his lineage and ensuring the resettlement of the estates of all his deceased predecessors.

The shaykh explained that purification of the wealth was an essential duty of a Muslim and, as unlawfully distributed estates were a form of harām income, the wealth that had thus reached him had to be cleansed, and this was the only possible method. The man agreed to do what the shaykh had demanded but expressed how difficult it was to accomplish such a task. The shaykh promised that he would guide him and all he had to do was follow his instructions. Since he was sincere, he undertook the task very seriously and under the guidance of the shaykh managed to accomplish it.

Now, when we reflect on the circumstances of those days, like the poor means of transport and communication, it seems to be an extremely difficult task, but because he had realised its importance, he managed to overcome all the obstacles and repayed every person whom he owed any money to.

Such incidents should inspire all of us to become more conscious towards the duties we are obliged to fulfil by Islām.

Even if it does not lead to any friction and controversy following a death, we still need to exercise extreme precaution in this regard, for this is a demand of the Sharee'ah.

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I advise you all to be very particular in these matters of Sharee'ah. It is important that we are aware of what the Sharee'ah demands of us and in order to do that we need to consult the 'ulamā in this regard. Even those of us who may have disregarded these Laws of Sharee'ah some time ago in the past, should immediately contact the 'ulamā and try and resettle their cases in the light of Sharee'ah, even if that entails a heavy compensation on our part.

A thought provoking incident

Once a man came to Shaykh Ashraf 'Ali Thānwi and requested to join his spiritual circle of mureeds (students in spirituality). The shaykh asked him whether he had come with a sincere urge. The man replied in the affirmative. So the shaykh said to him that since the Islamic laws of inheritance were not practised in his region, before he could pledge allegiance to him, it was necessary that he undertook the task of tracing back as far as he could in his lineage and ensuring the resettlement of the estates of all his deceased predecessors.

The shaykh explained that purification of the wealth was an essential duty of a Muslim and, as unlawfully distributed estates were a form of harām income, the wealth that had thus reached him had to be cleansed, and this was the only possible method. The man agreed to do what the shaykh had demanded but expressed how difficult it was to accomplish such a task. The shaykh promised that he would guide him and all he had to do was follow his instructions. Since he was sincere, he undertook the task very seriously and under the guidance of the shaykh managed to accomplish it.

Now, when we reflect on the circumstances of those days, like the poor means of transport and communication, it seems to be an extremely difficult task, but because he had realised its importance, he managed to overcome all the obstacles and repayed every person whom he owed any money to.

Such incidents should inspire all of us to become more conscious towards the duties we are obliged to fulfil by Islām.

Final Word

Now, that we have realized the importance of distributing inheritance in accordance with Sharee'ah, we should consult the 'ulamā and muftis to know the correct procedures in this regard. Remember, these Scholars fully understand and appreciate the need to keep in confidence whatever you mention. They will not go around publicising your matters. If you feel hesitant and do not wish to open your matters before them, then ask them about a supposed person. Describe your case without revealing your identity. Explain to them, for example, that a friend is concerned about the well-being of his daughters after his death, as he cannot rely on his sons. Is there anything that could be done to protect the interest of the womenfolk? Present your problems and concerns to them and accept whatever they advise, no matter how bitter their suggestion. Inshā'Allah, in this way you will succeed in both this world and the next.

Summary and Du'ā

We should heed the above advice and endeavour to act upon what has been related. Firstly, maintain a record of ownership at home: this does not imply that nobody else may make use of our items, as the owner will remain one but the users can number in many. Secondly, upon the death of an individual, all the estate belonging to him/her will be isolated and thereafter a mufti will be consulted to decide how and among whom this is to be distributed. Thirdly, remember, this age is one of depravity, therefore, sit down with an 'ālim and draw up an Islamic will (such a document has been prepared and is available, for free, from the *Islāmic Da'wah Academy*).

Finally, honestly reflect upon the mistakes we have made to-date. Whatever portion of inheritance we have failed to hand over to the rightful owners (especially our womenfolk), we should do so immediately, irrespective of any hardships involved. The endurance of such small and transient hardships will save us from the mighty and eternal ones of the Hereafter.

May Allah ﷻ grant all of us the tawfeeq to conduct all our matters in the light of the Sharee'ah. Āmeen.



INHERITANCE IN ISLĀM



We are witnessing an era where Islām, in spite of its vastness and applicability in every sphere of the human life, has been confined to mere beliefs and a handful of rituals. Due to such an appalling attitude on the part of the Ummah, it is not surprising to hear that many aspects of Deen have lost their importance within the eyes of the masses and are regarded as obsolete and outdated (unfortunately people fail to realise that the Laws of Allah can never be outdated).

As with some other important obligations of Islām, the obligation of ensuring the correct procedures in the field of inheritance has also been subjected to gross disregard and outright neglect. In the present times, this vital aspect of Islām seems to have been relegated to an unprecedented level and more or less abandoned. The result has been extreme carelessness in the common people with respect to the Islamic teachings of inheritance and division of the estate. People are seen resorting to either the non-Islamic legal systems or the prevailing customs in their respective societies.

Seeing such a state of affairs, the respected Shaykh Muhammad Saleem Dhorat embarked on the task of acquainting the Muslims on the importance of this vital duty. In accomplishment of this task, he delivered a number of lectures on this topic. It was decided that some of these discourses be selected and published in booklet form and two of these are presented here.